IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 23RD AUGUST 2007 / 1ST BHADRA 1929

Crl.Rev.Pet.No. 3118 of 2007()

CRA.38/2006 of SESSIONS COURT, KALPETTA
STC.167/2004 of JUDICIAL MAGISTRATE OF FIRST CLASS, KALPETTA.

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REVN. PETITIONER: APPELLANT/ACCUSED

B.CHANDRAN,S/O. P.C.BALAKRISHNAN,
SIVAGIRI ESTATE, THIRUNELLI POST,
APPAPPARA, MANANTHAVADY,
WAYANAD DISTRICT.

BY ADV. SRI.K.P.SARVOTHAMAN

RESPONDENTS:

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1. K.IMMANUVAL,S/O. KURIAN,
MUTTAPPALLIL VEEDU, MANHOORA P.O.,
POZHUTHANA VIA, WAYANAD DISTRICT.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 23/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.RAMKUMAR, J.

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Crl.R.P. No. 3118 of 2007

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Dated: 23-08-2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in S.T. Case No. 167 of 2004 on the file of the J.F.C.M., Kalpetta challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice.

4. The case of the revision petitioner is that while availing a loan from one Radhakrishnan, A friend of the complainant, he had entrusted three blank cheques with the said

Radhakrishnan, the accused subsequently repaid the loan but and one of the blank cheques was dishonestly handed over to the complainant who had misused the same by launching the present prosecution. Admittedly, the said Radhakrishnan, was not examined. The petitioner who accuses Radhakrishnan, did not send any lawyer notice demanding the cheque back upon discharge of the loan taken from Radhakrishnan. When he received statutory notice in this case he was aware that the cheque which he had allegedly entrusted with Radhakrishnan had been dishonestly passed on to the complainant. Still he did not send any notice to Radhakrishnan. The petitioner also did not mount the witness box to substantiate the above defence. Under these circumstances, the courts below were fully justified in rejecting the claim of the revision petitioner. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

4. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. Having regard to the facts and circumstances of the case, I am, however, inclined to modify the sentence imposed on the revision petitioner. Accordingly, if the revision petitioner pays to the first respondent complainant by way of compensation under Sec. 357 (3) Cr.P.C. a sum of Rs. **3,00,000/- (Rupees three lakhs only)** within **five months** from today, then he need to undergo only imprisonment till the

rising of the court. If the revision petitioner commits default in making the payment as aforesaid, he shall undergo simple imprisonment for three months by way of default sentence.

5. Amount, if any, paid by the revision petitioner pursuant to the orders, passed by the lower appellate court shall be refunded to the petitioner.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

Sd/-V. RAMKUMAR, JUDGE.

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/true copy/

P.A.to Judge